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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/961,441	09/24/2001	Asad A. Khan	15-875	6812
116	7590	11/24/2004	EXAMINER	
PEARNE & GORDON LLP 1801 EAST 9TH STREET SUITE 1200 CLEVELAND, OH 44114-3108			RAO, SHRINIVAS H	
			ART UNIT	PAPER NUMBER
			2814	

DATE MAILED: 11/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/961,441

Applicant(s)

KHAN ET AL.

Examiner

Steven H. Rao

Art Unit

2814

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 November 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☒ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-18, 26 and 35-43.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Continuation of 2. NOTE: It is noted that independent claims 1, 12 and 26 have been substantially amended to change their scope, therefore all pending claims 1-2,4-18,26 and 35-43 are of different scope at this stage (After Final) and will require a new search now. Applicants' contention that they have amended independent claims 1,12 and 26 to include all the limitations of claim 35 is incorrect (e.g. claim 1 does not recite the first and second quarter wave retarder recited in claim 35 , similarly claim 12 does not recite the bi-directional circular polarizer recited in claim 35 and claim 26 does not recite the ambidextrous circular polarizer recited in claim 35). Therefore none of the amended claims read over the applied Maeda reference .

Therefore the claims do not place the application in better condition for appeal as stated, but instead of reducing or simplifying issues they raise new issues .

Further Applicants' have added new claims 44-46 without canceling a corresponding number of finally rejected claims .

Therefore all of the above reasons make the entry of the amendment impossible.

It is noted that no agreement was reached in the interview and the Examiner has never indicated that presentation of claims of different scope will enter or considered contrary to MPEP, 37 CFR and all applicable laws which require such amendment not to be entered or considered.

The IDS mailed by the Applicants' on December 11, 2001 (as indicated other copy of the post card enclosed) was received by the Examiner for the first time November 01, 2004 (after the same was resubmitted by them on November 01, 2004) and has been considered and initialed On November 15, 2004. and the initialed copy is attached. The IDS allegedly filed on February 21, 2002 is not dealt with by the Applicants' in their response and the PTO has to date not received any copy or proof that this IDS was ever filed and leaves the PTO without copy of the alleged IDS or proof of it being filed with the PTO. Therefore the PTO cannot consider nonexistent (2/21/2002) IDS .

It is noted that Applicants' cited, as their reason for obtaining an interview after Final was to file a RCE, which was reiterated at the interview. (see interview summary) However now Applicants' have submitted a supplemental amendment after Final and want the amendment to be entered and considered.

The Office will respond to Applicants' other contentions/ arguments at a future appropriate time.

SL
11/15/04

LONG PHAM
PRIMARY EXAMINER